FILED
JUL 17 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 235

EARL B. SPURR,

Petitioner,

vs.

STASIA SPURR

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA AND SUPPORTING BRIEF.

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Counsel for Petitioner.

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FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

To the Honorable Supreme Court of the United States:

Your petitioner, Earl B. Spurr, respectfully prays for a review on a writ of certiorari of a decision of the Supreme Court of Appeals of Virginia, involved in the decree of the said court, entered on the 25th day of April, 1945, in the appeal therein pending, wherein your petitioner was Appellant and the above named Stasia Spurr was Appellee.

A transcript of the record below, together with the decree appealed from, has been filed with this petition in accordance with the rules of this Court.

Federal Jurisdiction

The jurisdiction of this Court is founded on Article 4, Section 1, of the Constitution of the United States, which provides that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." The courts of the State of Virginia, both the trial court and the Supreme Court of Appeals, denied petitioner his constitutional rights under this section by refusing to give full faith and credit to the judicial proceedings of the State of North Carolina, in which an absolute divorce was granted to petitioner.

Statement of the Matter Involved

(a) *The Cause of Action*

Respondent, Stasia Spurr, sued petitioner in the Circuit Court of the City of Norfolk, Virginia, for a divorce, and on March 3rd, 1941, obtained a divorce *a mensa et thoro*, that is a mere bill of separation, leaving the parties husband and wife, though separated in their persons and property. No further proceedings were had in the case leading to an absolute divorce. On November 18, 1942, petitioner had occasion for business reasons, among others, to move from the State of Virginia to the State of North Carolina. He established his domicile there in good faith and has continued to live there up to the present time, with no thought of returning to Virginia. In February, 1944, in strict compliance with the statutes of North Carolina on the subject, he obtained an absolute divorce under the North Carolina statute providing that "marriages may be dis-

solved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for two years, and the plaintiff in the suit for divorce has resided in the State for a period of six months." Thereafter he married Ruth Spurr and is now living with her in the State of North Carolina.

(b) *Proceedings*

In May, 1944, it was brought to the attention of the Circuit Court of the City of Norfolk, Virginia, by appropriate proceedings, that a divorce had been granted to petitioner in North Carolina, and the court was asked to give full faith and credit to the decree of the North Carolina court. This the court refused and entered a decree "that the divorce claimed to have been procured by the defendant, Earl B. Spurr in the State of North Carolina * * * is of no force or effect in the State of Virginia, and that the said plaintiff, Stasia Spurr, is still the lawful wife of the said Earl B. Spurr in the State of Virginia." This decree of the trial court was affirmed by the Supreme Court of Appeals of Virginia on the 25th day of April, 1945.

(c) *Question of law involved*

Did the Circuit Court of the City of Norfolk, Virginia, and the Supreme Court of Appeals of Virginia, give to the decree of the North Carolina court that full faith and credit which it was their duty to do under the full faith and credit clause, Const. Art. 4, Sec. 1?

Reason Relied On for the Allowance of Writ

The special and important reason for review of the decision of the Circuit Court of the City of Norfolk, Virginia,

and the decision of the Supreme Court of Appeals of Virginia affirming it, is:

Said courts have decided a Federal question of substance in a way probably not in accord with the applicable decisions of this Court. See *Williams* v. *North Carolina,* 317 U. S. 287, 63 Sup. Ct. 207, decided December 21, 1942; *Williams* v. *State of North Carolina,* 65 Sup. Ct. 1092, decided May 21, 1945; *Esenwein* v. *Commonwealth of Pennsylvania,* 65 Sup. Ct. 1118, decided May 21, 1945.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be sued out of and under the seal of this Honorable Court, directed to the Supreme Court of Appeals of Virginia, commanding that court to certify and to send to this Court, for its review and determination, on a day certain to be therein named, a full and complete transcript of the record, and all of the proceedings in said case of *Spurr* v. *Spurr;* and that the said decree of the Supreme Court of Appeals of Virginia may be reviewed by this Honorable Court; that such further proceedings may be had as may be necessary to afford your petitioner complete relief; and that such other and further relief in the premises may be had as to this Honorable Court may seem right and just, and your petitioner will ever pray.

EARL B. SPURR,
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